

In times of crisis, Rebidding can be an option

Em caso de dúvidas sobre os temas discutidos nessa publicação, favor contatar o escritório.

If you have any questions regarding the matters discussed in this publication, please contact the office.

Antonio Araldo Ferraz Dal Pozzo
Sócio Fundador | Founding Partner
araldo@dalpozzo.com.br

Augusto Neves Dal Pozzo
Sócio Fundador | Founding Partner
augusto@dalpozzo.com.br

João Negrini Neto
Sócio | Partner
joao@dalpozzo.com.br

Percival José Bariani Junior
Sócio | Partner
percival@dalpozzo.com.br

Beatriz Neves Dal Pozzo
Chief Executive Officer | CEO
beatriz@dalpozzo.com.br

Renan Marcondes Facchinatto
Advogado | Lawyer
Autor | Author
renan@dalpozzo.com.br

A presente publicação é produzida pelo corpo técnico do escritório Dal Pozzo Advogados e se destina a fins meramente informativos. Ela não constitui e tampouco deve ser utilizada como aconselhamento advocatício. O texto reflete a opinião pessoal de seus autores.

This text is published by Dal Pozzo Advogados for informational purposes only. It is not intended and it should not be interpreted, or construed, as legal advice. The text expresses the opinion of the authors.

© Dal Pozzo Advogados. All rights reserved 2018.

DALPOZZO
ADVOGADOS

SÃO PAULO
Rua Gomes de Carvalho, 1510 - 9º andar
04547-005 - Vila Olímpia - São Paulo
Office +55 11 3058-7800

BRASÍLIA
SHS Quadra 06 - Conjunto A - Bloco E - Sala 1411
70316-000 - Edifício Brasil 21 - Brasília DF
Office +55 61 3033-1760

dalpozzo.com.br

In 2013 and 2014, the concession program implemented by the Federal Government (ports, airports, highways, etc.) focused strongly on generating revenue by obtaining large sums from permissions. At the time, there were still some positive predictions for the future of the economy and tremendous willingness, on the part of the private sector, to invest in infrastructure opportunities.

However, the economic downturn that followed affected the initial projections of these projects dramatically, rendering many of them unfeasible by affecting not only the payment of the permissions, but also the investments, considering the difficulty to obtain financing lines.

Traditionally, the solution offered by the Concession Law of 1995 would follow in the direction of expiration: the concessionary would take the blame for the crisis and could have his contract terminated, with severe penalties.

With the creation of rebidding, initially established by means Presidential Decree MP-752, and then converted into Federal Law 13,448, there is the effective acknowledgment that not always that which appears to be a breach of contract, is in fact one.

There are circumstances and contingencies which are beyond the control of the government; and even so much more beyond the control of the private sector and the concessionaires. Hence, we must recognize that they integrate the economic realm of the extraordinary. Therefore, it would not make sense to terminate the concession contract on grounds of expiration, keeping in mind that, in the case of rebidding, the contract ends by reason of noncompliance on the part of the concessionaire, since he has not failed to fulfill the contract voluntarily.

By means of rebidding, the concessionaire actually becomes a true partner of the Public Administration to assist in gathering information for the modeling of a new tender, at the same time that he has the opportunity to terminate his contractual relationship without being severely penalized by a situation that could never have been anticipated or foreseeable or considered as a normal business risk.



In times of crisis, Rebidding can be an option

Clearly, therefore, the recent institute integrates the legislation to ease the joint effort between the Public Administration and the private sector to prioritize the management of public interest to the detriment of contractual disputes that only generate more liabilities and expenses for both sides and impede the economic development of the country.